FILE COPY

JAN 16 1948

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 71

H. C. JONES, Collector of Internal Revenue,
Petitioner,

VERSUS

LIBERTY GLASS COMPANY,
Respondent.

PETITION FOR REHEARING

EARL FOSTER,
Oklahoma City, Oklahoma,
Attorney for Respondent.

JANUARY, 1948.

KING LAW BRIEF COMPANY, 418 NORTHWEST THIRD, OKLAHOMA CITY—PHONE 3-2969

INDEX

	PAGE
Statement	1
Proposition I	2
Authority:—	
Opinion of this Court	2
Section 322, Internal Revenue Code	2
Section 3313, Internal Revenue Code	2
Proposition II	2
Authority:—	
Opinion of this Court	2
Proposition III	3
Authority:—	
Opinion of this Court	3
The Huntley Case	3, 4
Proposition IV	6
Authority:—	
Opinion of this Court	6
Proposition V	6
Conclusion	8
Certificate	9

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 71

H. C. JONES, Collector of Internal Revenue,

Petitioner,

VERSUS

LIBERTY GLASS COMPANY,

Respondent.

PETITION FOR REHEARING

Comes now the respondent in the above entitled cause and respectfully presents to the honorable Supreme Court of the United States that on the 22nd day of December, 1947, an opinion was rendered in this cause reversing the judgment of the United States Circuit Court of Appeals for the 10th Circuit.

That said opinion overlooked and misconstrued certain facts which are decisive in this case and were duly presented by counsel and shown by the record.

PROPOSITION I

That said opinion on Page 7 of the printed copy sent out by the clerk of this Court makes the following statement:

> "Overpayments are said to refer *solely* to excess payments resulting from errors by taxpayers in the preparation of their returns or in related activities, while erroneous or illegal assessments and collections are claimed to relate to various kinds of errors on the part of revenue agents." (Emphasis ours.)

We have re-examined our brief and we find no such contention made nor do we have any recollection of making any such contention in our oral argument.

As shown by our original brief, we believe that overpayment as used in Section 322 of the Internal Revenue Code refers to payments that were made by reason of any error, whether it was by the taxpayer in the preparation of his return or by the Internal Revenue Agent in computing the amount actually due the taxpayer. That taxes "erroneously or illegally assessed or collected," as used in Section 3313 of the Internal Revenue Code, refers to a tax that was absolutely illegal and was tax collected without any legal authority, although in computing the tax neither the taxpayer nor the Internal Revenue agent made any error whatsoever.

PROPOSITION II

That said opinion at Page 7 further states as follows:

> "Such an excess payment may be traced to an error in mathematics or in judgment or in interpretation of facts or law."

We respectfully submit that the payment of the tax in the instant case cannot "be traced to an error in mathematics or in judgment or in interpretation of facts or law"; that the tax paid in the instant case was an illegal tax and cannot be traced to any of the matters mentioned.

PROPOSITION III

On Page 9 of the printed copy of the opinion it is stated as follows:

> "The arrangement whereby all income tax refund claims are to be governed by what is now 322 (b) (1) was established in an unmistakable manner nearly a quarter of a century ago, an arrangement that has been continued through various reenactments and changes in the revenue laws. *And that arrangement has been consistently recognized and followed by the Treasury Department.*" (Emphasis ours.)

The learned justice seems to place great emphasis upon the consistency with which the Treasury Department has followed the principle announced in this decision. The record in this case seems very clear to us to show that the Treasury Department has been *inconsistent* in its recognition of the principle involved herein. The Treasury Department has, *by rule and regulation*, consistently followed the principle announced in this opinion, but, *by its conduct*, since 1939 it has been most inconsistent in following this principle. The Circuit Court of Appeals, in 1939, in the *Huntley case*, definitely announced that the principle theretofore followed by the Treasury Department was erroneous and promulgated a different principle. The Treasury De-

partment, and the Justice Department, its attorneys, announced that no writ of *certiorari* would be filed. To all taxpayers in the United States did this not in substance amount to a public announcement that the decision was correct? At least the Government told the taxpayers publicly and officially that it was not going to appeal, but according to its attitude when dealing with each individual taxpayer thereafterwards it refused to follow the principle. This does not seem to us to be consistent, and if this were all the inconsistency of the Treasury Department it would not be so apparent.

Thereafterwards, and during the years 1939, 1940, 1941, 1942, 1943, 1944 and 1945 the various cases referred to in our brief and acknowledged by the Department of Justice and by this Court to have followed the *Huntley case* were handed down by the various district courts and circuit courts of appeals throughout the United States, and no one of those cases during all of those years was appealed to the Supreme Court of the United States. No petition for writ of *certiorari* was ever filed in any of those cases. So in effect the Treasury Department announced on these numerous occasions that no *certiorari* would be filed, the same as he had done in the *Huntley case;* yet during all of those years to each taxpayer it took an entirely different position. He told each taxpayer that he was not recognizing these cases; even wrote to the Liberty Glass Company a letter to that effect, but before the courts and to the public generally he certainly recognized the principle announced in that case, at least he did

nothing to indicate that he considered those cases wrong in principle. Therefore, during the years from 1939 to 1946 taxpayers who filed refunds for income tax within four years and brought suit in any district court of the United States, *collected their money*, but those taxpayers who followed the "arrangement" of the Treasury Department *failed to collect their money*. In each case the tax was collected illegally. We respectfully submit that if this is *consistency* we are unable to understand what that word means.

However, in the case at Bar, the Government did publicly and before the courts, become consistent with what his position had been prior to 1939. Here again it appears to us that the Treasury Department was most inconsistent. The case at Bar involves only $1,000.00 plus. It is an admitted fact that the many cases decided between 1939 and 1946 involved thousands of dollars. Is it consistency for the Treasury Department to permit some eight or ten taxpayers over a period of approximately nine years to collect on claims for refund by action in the courts many thousands of dollars and then for some reason unknown to us it is important that the case of the Liberty Glass Company involving a little more than One Thousand Dollars should be appealed to the Supreme Court of the United States, remembering that the lower courts, both district and circuit court of appeals, had passed favorably upon this question in this case exactly as was done in all of the other cases? We respectfully submit

that it is most difficult to harmonize the opinion of the learned justice in this case with the facts and circumstances that are and have been at all times admitted by the Treasury and the Justice Departments.

PROPOSITION IV

We call attention to the last sentence of the opinion.

> "That is true even though the claim arose out of an income tax alleged to have been erroneously or illegally assessed or collected."

This presents a question that apparently has been definitely decided by this Court in the instant case, but we cannot refrain from again stating that it is going a long ways to hold that "overpayment of tax" means exactly the same as "erroneous or illegally assessed or collected" tax.

PROPOSITION V

The decision in this case nowhere mentions and apparently does not consider that rule of law thoroughly established by this Court, and every other court which was referred to in our briefs and oral argument, which is substantially that in all cases involving taxation all doubt will be resolved in favor of the taxpayer, and more especially when the question involved is a statute of limitations. In this case the Government collected from my client money that was not due to the Government. The Government so admits. It has no moral right to keep the money. It does have a legal right to keep it if we fail

to act in time. Certainly, in cases of this kind, every possible doubt should be resolved in favor of the taxpayer. Government exists for the benefit of the citizens and taxpayers. To take money that was originally illegal is bad in itself, but to refuse to pay it back is a very serious matter, not only because of the interest of the individual taxpayer but from a public policy standpoint. Our American customs and institutions have been established in such a way that any man who refuses to pay his just private debts because of a statute of limitations is looked upon with suspicion, and while I fully realize that the Supreme Court of the United States must and will follow the law regardless of how it affects any individual I most respectfully submit that since we have established our social and political order in such a way that an individual is looked upon with suspicion who claims the statute of limitations to avoid his just debts, that the courts, and especially the Supreme Court of the United States, should resolve every doubt in favor of the taxpayer in order that he may have returned to him that to which he was in law and morals entitled, except that he fail to file his claim in time. This is especially applicable in this case, because there is surely a *doubt* here, since so many able judges in the district and Circuit Courts of Appeals throughout the United States, and one eminent justice of this Court, all dissent from the majority opinion.

CONCLUSION

We most respectfully submit that this petition for rehearing should be granted, and the case reconsidered and the lower court's opinion affirmed.

Respectfully submitted,

EARL FOSTER,
Oklahoma City, Oklahoma,
Attorney for Respondent.

JANUARY, 1948.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1947

No. 71

H. C. JONES, Collector of Internal Revenue,
Petitioner,

VERSUS

LIBERTY GLASS COMPANY,
Respondent.

CERTIFICATE ON PETITION FOR REHEARING

I, EARL FOSTER, on oath state:

That I am attorney for the respondent in the above styled cause, and do hereby certify that the Petition for Rehearing this day filed in this Court is presented in good faith and not for the purpose of delay.

Subscribed and sworn to before me this _____ day of January, 1948.

Notary Public.

My commission expires: November 3, 1951.

(The original of the above certificate is attached to Service Copy of this Petition for Rehearing.)

SUPREME COURT OF THE UNITED STATES

No. 71.—October Term, 1947.

H. C. Jones, Collector of Internal Revenue, Petitioner, v. The Liberty Glass Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[December 22, 1947.]

Mr. Justice Murphy delivered the opinion of the Court.

Our concern here is with the period of limitations applicable to the filing of claims for refund of federal income taxes. Must such claims be filed within two years after payment of the tax, as provided by § 322 (b) (1) of the Internal Revenue Code, or within four years after payment of the tax, as provided by § 3313 of the Code?

The corporate taxpayer, respondent herein, filed its income and excess-profits tax return for 1938, a return which indicated a tax liability of $1,193.25. This sum, plus a small additional assessment, was paid in 1939. A revenue agent later investigated the taxpayer's liability again, resulting in an additional assessment of $6,640.81. Payment of this amount was made on March 8, 1941. Over three years later, on March 30, 1944, the taxpayer filed a claim for refund of $1,053.49. It was stated that the revenue agent erroneously had failed to allow certain credits for sums used by the taxpayer in 1938 to reduce its indebtedness. Reliance was placed by the taxpayer on the four-year limitation period specified in § 3313. The Commissioner of Internal Revenue rejected this claim, pointing out that § 3313 specifically exempts from its application income, war-profits, excess-profits, estate and gift taxes.

This suit was then brought by the taxpayer in the District Court to recover the amount alleged by the refund claim to be due. That court held that § 3313 was applicable and gave judgment for the taxpayer. 66 F. Supp. 254. The Tenth Circuit Court of Appeals, one judge dissenting, affirmed the judgment. 159 F. 2d 316. The problem being one of importance in the administration of the revenue laws, we granted certiorari.

Section 322 (b) (1) is to be found in Subtitle A of the Internal Revenue Code, a subtitle dealing with those taxes over which the Tax Court has jurisdiction. Such jurisdiction includes income, excess-profits, estate and gift taxes. More specifically, § 322 (b) (1) appears under Chapter 1 of the Code, pertaining to income taxes. It is concerned with overpayments of income taxes and provides quite simply that no refund shall be allowed unless a claim for refund "is filed by the taxpayer within three years from the time the return was filed by the taxpayer or within two years from the time the tax was paid."[1]

Section 3313, on the other hand, is located under Subtitle B of the Code, a subtitle devoted to miscellaneous taxes. It is in Chapter 28, which contains various provisions common to such taxes. And it is among those provisions dealing with the assessment, collection and refund of the taxes. It reads as follows: "All claims for the refunding or crediting of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as otherwise provided by law in the case of income,

[1] The return in this case was filed in June, 1939. Since the claim was filed on March 30, 1944, no contention could be made that it was within the three-year period from the date the return was filed.

war-profits, excess-profits, estate, and gift taxes, be presented to the Commissioner within four years next after the payment of such tax, penalty, or sum. The amount of the refund (in the case of taxes other than income, war-profits, excess-profits, estate, and gift taxes) shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund."

The substance of § 3313 of the Code has long been a part of federal statutory law. Its ancestry can be traced back to 1872, when § 3228 of the Revised Statutes was enacted.[2] Section 3228 established a procedure for filing claims for refund of any internal revenue tax alleged to have been "erroneously or illegally assessed or collected" and created a limitation period of two years from the time the cause of action accrued, later extended in 1921 to four years from the date of payment of the tax.[3] But soon after the entry of the income tax into the federal scene in 1913, separate provision was made for the filing of claims for refund of income taxes "paid in excess of those properly due." Section 14 (a) of the Revenue Act of 1916[4] was the first such provision and it made clear that § 3228 was inapplicable to claims of this nature. Section 252 of the Revenue Act of 1918,[5] followed by § 252 of the 1921 Act,[6] continued this scheme of separate treatment. These later provisions were written so as to include refund claims relating to war-profits and excess-profits taxes as

[2] Section 3228 was in the nature of a revision of § 44 of the Act of June 6, 1872, 17 Stat. 230, 257.

[3] Revenue Act of 1921, § 1316, 42 Stat. 227, 314.

[4] 39 Stat. 756, 772. This provided that the claim for refund might be presented "notwithstanding the provisions of section thirty-two hundred and twenty-eight of the Revised Statutes."

[5] 40 Stat. 1057, 1085.

[6] 42 Stat. 227, 268.

well as those involving income taxes; and a limitation of five years from the date the return was due was placed on the filing of such claims. It was further specified that the procedure therein detailed was to be followed "notwithstanding the provisions" of § 3228.

Section 252, as it appeared in the 1921 Act, was then changed in 1923[7] so as to permit claims for refund of income and profits taxes "paid in excess of that properly due" to be filed within two years after the tax was paid, in addition to the five-year period after the due date of the return. This change was made "so that the taxpayer who has, by agreement with the Treasury, permitted the time for the final assessment of the taxes due from him to be made after the expiration of the five-year period, will not be barred from making a claim for a refund when such assessment is made and the taxpayer *alleges that*

---

[7] Act of March 4, 1923, 42 Stat. 1504, 1505. In amending § 252, the Act of March 4, 1923, made mention of refunds of income taxes to withholding agents which might be made under the provisions of "section 3228 of the Revised Statutes." This was an obvious reference to the practice of the Treasury Department, admitted to be of "very doubtful legality," H. Rep. No. 1424, 67th Cong., 4th Sess., p. 2, of allowing a taxpayer who had permitted an additional assessment after the five-year period from the due date of the return (specified by § 252 of the 1921 Act) to file a claim for refund within four years after payment of the tax (pursuant to § 3228), even though the five-year period had elapsed. The Treasury had instituted this practice to prevent inequities which might otherwise ensue to such taxpayers, but it was without legislative sanction. It was to take care of the taxpayers who had taken advantage of the Treasury practice that the reference in question in the Act of March 4, 1923, was made. As to claims pending on March 4, 1923, which were timely filed under § 3228, but not timely under § 252, refunds to withholding agents were necessarily to be made under § 3228. This provision was not repeated in subsequent legislation and it was not indicative of a legislative intent to permit income tax refund claims to be governed by § 3228 in the future.

the assessment is illegal."[8] Amending § 252 rather than § 3228 of the Revised Statutes to accomplish this purpose was significant. It was an unequivocal indication that § 252, in speaking of claims for refund of "excess" payments of income and profits taxes, was designed by its framers to include not only those payments growing out of errors in the preparation of returns but also those payments resulting from illegal or erroneous assessments. See *Graham* v. *duPont*, 262 U. S. 234, 258.

The Revenue Act of 1924[9] transferred the substance of the former § 252 to a new § 281. A four-year period of limitations from the date of the payment of the tax was established, a period coinciding in length with that prescribed by § 3228. The reference to the type of payments involved was recast; in place of speaking of payments "in excess of that properly due," § 281 used the simple term "overpayments."[10] And instead of stating in § 281 that its provisions should apply "notwithstanding the provisions" of § 3228 of the Revised Statutes, § 3228 itself was amended[11] to make it applicable to all claims for the refunding or crediting of any internal revenue tax "except as provided in section 281 of the Revenue Act of 1924." This placing of an exceptive clause in § 3228 was done "to remove the doubt which now exists as to whether or not the provisions of section 3228, Revised Statutes, apply in any event to income

---

[8] Emphasis added. H. Rep. No. 1424, 67th Cong., 4th Sess., p. 2; S. Rep. No. 1137, 67th Cong., 4th Sess., p. 2.

[9] 43 Stat. 253, 301.

[10] The Revenue Act of 1924, 43 Stat. 253, 296, also created a new § 272, dealing with "overpayments" of income tax installments. This spoke of overpayments in the sense of payments of "more than the amount determined to be the correct amount of such installment." This provision now exists as § 321 of the Internal Revenue Code.

[11] 43 Stat. 253, 342.

taxes." [12] In other words, the statutory drafters intended to make certain that § 3228 was in no event to apply to income tax refund claims. Such claims were to be governed exclusively by § 281.

The essence of § 281 of the 1924 Act has been carried through to the present § 322 of the Internal Revenue Code.[13] The only significant change in the interval, for our purposes, was a reduction in the period of limitations, as measured from the payment of the tax, from four years to three years and finally to two years. And § 3228 of the Revised Statutes, as amended to state that it applies "except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes," has become the current § 3313 of the Code.

With this background in mind, we find the pattern of limitation periods for tax refund claims to be clear. Section 3313 of the Code establishes a four-year period for all internal revenue taxes, except as otherwise provided by law in the case of specified taxes. Among the latter is the income tax, as to which § 322 (b) (1) makes provision "otherwise" by requiring that refund claims be presented within two years of payment or within three years from the filing of the return. Provisions are also made "otherwise" in the case of the estate tax (§ 910 of the Code) and the gift tax (§ 1027 of the Code).

The argument is made, however, that § 322 (b) (1) deals only with income tax "overpayments" and not with income taxes "erroneously or illegally assessed or col-

---

[12] H. Rep. No. 179, 68th Cong., 1st Sess., p. 71; S. Rep. No. 398, 68th Cong., 1st Sess., p. 44. This quotation was taken verbatim by the Congressional committees from the statement of A. W. Gregg of the Treasury Department, Statement of the Changes Made in the Revenue Act of 1921 by H. R. 6715 and the Reasons Therefor, Senate Committee Print, 68th Cong., 1st Sess., March 6, 1924, p. 37.

[13] See Revenue Act of 1926, § 284, 44 Stat. 9, 66; Revenue Act of 1928, § 322, 45 Stat. 791, 861; Revenue Act of 1932, § 322, 47 Stat. 169, 242; Revenue Act of 1934, § 322, 48 Stat. 680, 750.

lected." Overpayments are said to refer solely to excess payments resulting from errors by taxpayers in the preparation of their returns or in related activities, while erroneous or illegal assessments and collections are claimed to relate to various kinds of errors on the part of revenue agents. Since there is no provision "otherwise" for income tax refund claims involving the latter type of errors, the conclusion is reached that the four-year limitation period of § 3313 remains applicable. We cannot agree.

In the absence of some contrary indication, we must assume that the framers of these statutory provisions intended to convey the ordinary meaning which is attached to the language they used. See *Rosenman* v. *United States*, 323 U. S. 658, 661. Hence we read the word "overpayment" in its usual sense, as meaning any payment in excess of that which is properly due. Such an excess payment may be traced to an error in mathematics or in judgment or in interpretation of facts or law. And the error may be committed by the taxpayer or by the revenue agents. Whatever the reason, the payment of more than is rightfully due is what characterizes an overpayment.

That this ordinary meaning is the one intended by the authors of § 322 (b) (1) is quite evident from the legislative history which we have detailed. The word "overpayment" first appeared in § 281 of the 1924 Revenue Act, one of the direct ancestors of § 322 (b) (1). The word was there used as a substitute for the previous reference to payments "in excess of that properly due," a phrase that is a perfect definition of an overpayment and that is not necessarily confined to overpayments occasioned by errors made by taxpayers. The immediate predecessor of § 281 had employed that phrase and had been enacted in 1923 with the expressed intention of including claims growing out of illegal assessments. There was not the slightest indication that the substitution of the word "overpayment" was designed to narrow the scope of § 281.

It apparently was a mere simplification in phraseology. But it does make clear the sense in which the word was first used in this context. The generic character of the word was emphasized from the start.[14] And we see no basis for making it over into a word of art at this late date.

The legislative history further reveals a consistent intention to make a separate and complete limitation provision for income tax refund claims, whatever might be the underlying basis of the claims. Section 322 and its predecessors were devised in order to provide such an exclusive scheme. Claims relating to the income tax have at all times been explicitly excluded from § 3313.[15] This arrangement is but part of the general plan evident in the Internal Revenue Code of providing separate treatment for the income, profits, estate and gift taxes, as distinct from the miscellaneous taxes and the excise, import and temporary taxes. We would be doing unwarranted violence to this clear demarcation were we to read the word "overpayment" so as to place certain types of income tax refund claims within the scope of § 3313, a section

[14] Section 272 of the 1924 Act (now § 321 of the Code) referred to "overpayments" of income tax installments as payments of "more than the amount determined to be the correct amount of such installment." See note 10, *supra*. Such a definition admits of no distinction between errors by the taxpayer and errors by the revenue agents.

[15] Reference should also be made to the second sentence of § 3313, providing that the amount of refund may not exceed the amount of tax paid during the four-year period. There is a parenthetical phrase in this sentence which specifically excludes income, war-profits, excess-profits, estate and gift taxes. If the first sentence of § 3313, establishing the four-year limitation period, applied to income tax refund claims arising out of illegal assessments, there would be no limit on the amount of refund by reason of this second sentence. Such a result is without support in the purpose or history of the provisions dealing with these refund claims.

that has always been divorced from the income tax portion of the revenue laws.

It is pointed out, however, that various lower federal courts, beginning in 1939, have reached a contrary result.[16] They have held that § 3313 rather than § 322 (b) (1) governs refund claims for income taxes alleged to have been "erroneously or illegally assessed or collected." Since Congress has subsequently convened from time to time and has amended § 322 in other respects without expressly disapproving this interpretation, the contention is advanced that legislative acquiescence in the interpretation must be assumed. But the doctrine of legislative acquiescence is at best only an auxiliary tool for use in interpreting ambiguous statutory provisions. See *Helvering* v. *Reynolds*, 313 U. S. 428, 432. Here the language and the purpose of Congress seem clear to us. The arrangement whereby all income tax refund claims are to be governed by what is now § 322 (b) (1) was established in an unmistakable manner nearly a quarter of a century ago, an arrangement that has been continued through various reenactments and changes in the revenue laws. And that arrangement has been consistently recognized and fol-

[16] *Huntley* v. *Southern Oregon Sales*, 102 F. 2d 538, was the first case so holding. Subsequent decisions of the same tenor have relied in large part upon the *Huntley* case. *Olsen* v. *United States*, 32 F. Supp. 276; *United States* v. *Lederer Terminal W. Co.*, 139 F. 2d 679; *In re Tindle's Estate*, 59 F. Supp. 667, affirmed *per curiam sub nom. Pennsylvania Co. for Insurances on Lives* v. *United States*, 152 F. 2d 757; *Godfrey* v. *United States*, 61 F. Supp. 240; *Noble* v. *Kavanagh*, 66 F. Supp. 258, affirmed *per curiam*, 160 F. 2d 104; *Sbarbaro* v. *United States*, 73 F. Supp. 213. See also *Fawcett* v. *United States*, 70 F. Supp. 742. Compare *Central Hanover Bank & Trust Co.* v. *United States*, 67 F. Supp. 920. In many cases, however, the applicability of § 322 (b) (1) to claims of the type here involved was assumed without question and without an explicit holding on the point. See, for example, *United States* v. *Garbutt Oil Co.*, 302 U. S. 528.

lowed by the Treasury Department.[17] Under those circumstances, it would take more than legislative silence in the face of rather recent contrary decisions by lower federal courts to overcome the factors upon which we have placed reliance. Cf. *Electric Battery Co.* v. *Shimadzu*, 307 U. S. 5, 14; *Missouri* v. *Ross*, 299 U. S. 72, 75; *United States* v. *Elgin, J. & E. R. Co.*, 298 U. S. 492, 500. We do not expect Congress to make an affirmative move every time a lower court indulges in an erroneous interpretation. In short, the original legislative language speaks louder than such judicial action.

We accordingly conclude that all income tax refund claims, whatever the reasons giving rise to the claims, must be filed within three years from the time the return was filed or within two years from the time the tax was paid, as provided in § 322 (b) (1). The four-year period prescribed by § 3313 is inapplicable to such claims. Since respondent filed its income tax refund claim more than three years after filing the return and more than two years after payment of the tax, its claim was out of time. That is true even though the claim arose out of an income tax alleged to have been "erroneously or illegally assessed or collected."

Reversed.

MR. JUSTICE DOUGLAS dissents.

---

[17] See I. T. 1447, I–2 Cum. Bull. 220 (1922); T. D. 3457, II–1 Cum. Bull. 177 (1923) and T. D. 3462, amending Regulations 62, II–1 Cum. Bull. 180 (1923); S. M. 1712, III–1 Cum. Bull. 345 (1924); S. M. 2293, III–2 Cum. Bull. 310 (1924); G. C. M. 3152, VII–1 Cum. Bull. 153 (1928); G. C. M. 13759, XIII–2 Cum. Bull. 102 (1934); Mim. 4814, 1938–2 Cum. Bull. 96; I. T. 3483, 1941–1 Cum. Bull. 397.

The present Treasury viewpoint is codified in Treasury Regulations 111, promulgated under the Internal Revenue Code, § 29.322–3 and § 29.322–7. See also Treasury Regulations 103, promulgated under the Code, § 19.322–3 and § 19.322–7, as amended by T. D. 5256, 1943 Cum. Bull. 550; and Treasury Regulations 101, promulgated under the Revenue Act of 1938, Articles 322–3 and 322–7.